

**Standard terms and conditions for the  
supply of services of temporary contractors  
by Healthcare Staffing Solutions Limited**

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**These terms and conditions** apply in relation to any recruitment services provided by Healthcare Staffing Solutions Ltd (company number: 10326674) whose registered office is at Ground Floor, 90- 96 Victoria Road, Chelmsford CM1 1QU; (the "**Company**"); to any client (the "**Client**").

**Background:**

- (A) The Company is in the business of sourcing, introducing and supplying the services of temporary workers and independent service providers to fulfil its clients' service requirements.
- (B) The Company shall arrange for the Services to be provided to the Client in accordance with the terms of this Agreement.
- (C) This Agreement is a framework agreement, the terms of which shall apply to any and each Assignment Schedule agreed between the parties.
- (D) Certain terms in this Agreement will or will not apply depending on whether the Conduct Regulations apply or not as set out in clause 14. The Client will be notified in the relevant Assignment Schedule as to whether the Supplier and Consultant have opted-out of the Conduct Regulations. PSC Contractors represent that they supply their services on an independent business to business basis and do not regard themselves as working for and under the control of the Client.
- (E) In relation to the supply of individuals who do not operate on an independent service provider basis the Company acts as an employment business for the purposes of the Employment Agencies Act 1973, the definition of employment business set out in the Employment Agencies Act 1973 being very wide and covering a wide range of service providers.

**It is agreed** as follows:

**1. Definitions and interpretation**

**1.1** In this Agreement, unless the context otherwise requires, the following definitions shall apply:

**"Agreement"** means the agreement between the Company and the Client comprising the terms set out in this document including each Assignment Schedule and any notices regarding Client credit terms pursuant to clause 4.

**"Apprenticeship Levy"** means the levy on UK employers with annual pay bills in excess of £3 million to fund new apprenticeships, pursuant to Part 6 of the Finance Act 2016.

**"Assignment Schedule"** means the schedule confirming the details of the each Assignment; the term **"Assignment"** shall be construed accordingly.

**"AWR"** means the Agency Workers Regulations 2010.

**"Business Day"** means any day (other than Saturday or Sunday) on which clearing banks are open for business in London.

**"Client's Group"** means the Client, any body corporate of which the Client is a subsidiary (as defined in section 1159 of the Companies Act 2006), any other subsidiary of such body corporate and any subsidiary of the Client.

**"Client's Systems"** means the systems which the Client makes available to the Supplier and/or the Consultant for use in relation to the Services.

**"Company's Group"** means the Company, any body corporate of which the Company is a subsidiary (as defined in section 1159 of the Companies Act 2006), any other subsidiary of such body corporate and any subsidiary of the Company.

**"Conduct Regulations"** means The Conduct of Employment Agencies and Employment Businesses Regulations 2003.

**"Consultant"** means the individual named in the relevant Assignment Schedule, assigned to the performance of the Services as at the Start Date of the relevant Assignment and any substitute pursuant to clause 5.

**"Contracted-Out"** means the supply of a service where the service provider is responsible (as a matter of contract and reality) for delivering one or more defined deliverables and where payment for the service is calculated on a deliverables or output basis rather than on a time-spent or time and materials basis. The provision of staff or labour on a time-spent basis shall not be a Contracted-Out arrangement.

**"Conversion Fee"** means 250 times the hourly Payment Rate (or pro-rated equivalent hourly rate if Payment Rates are based on a period of more or less than an hour), subject to a minimum fee of £2,500 and charge will be whichever is greater.

**"Data Protection Legislation"** means any laws and regulations in any relevant jurisdiction relating to privacy or the use or processing of data relating to natural persons, including: (a) EU Directives 95/46/EC and 2002/58/EC (as amended by 2009/139/EC) and any legislation implementing or made pursuant to such directives, including (in the UK) the Data Protection Act 1998 (the "DPA") and the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (b) from 25 May 2018, EU Regulation 2016/679 ("GDPR"); and (c) any laws or regulations ratifying, implementing, adopting, supplementing or replacing GDPR or DPA; in each case, to the extent in force, and as such are updated, amended or replaced from time to time.

**"End User"** means any client or customer of the Client for whom, or at whose premises, the Services are performed under this Agreement.

**"Engagement"** means the Client's direct or indirect via any person other than the Company:

- (a) engagement or employment of:
  - (i) the Consultant;
  - (ii) the Supplier; or
  - (iii) any individual, such as the Consultant or their substitute, engaged through the Company and/or the Supplier; or
- (b) other arrangement for any of the persons in (a)(i), (ii) or (iii) above to provide services to the Client or any member of the Client's Group or an End User;

**"Extended Hire Period"** means an aggregate period of service provision of [26] weeks (excluding, for the avoidance of doubt, any period during which services are not provided).

**"Force Majeure"** means any cause preventing a party from performing any or all of its obligations arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the party so affected.

**"Good Industry Practice"** means the exercise of the skill, diligence, prudence, foresight and judgment which would be expected from a suitably skilled and experienced person engaged in the same type of services as the Services, applying the best standards currently generally applied in the relevant industry.

**"Hire Period"** means an aggregate period of service provision of [14] weeks (excluding, for the avoidance of doubt, any period during which services are not provided).

**"Inside IR35"** means where the circumstances under which the Contractor will provide the Services under the Assignment are such that the requirements set out in s61M(1) of the Off Payroll IR35 Legislation are satisfied.

**"Introduction"** means

- (a) the interview by the Client of:
  - (i) the Supplier; or
  - (ii) an employee, worker, officer or representative of the Supplier (including, for the avoidance of doubt, the Consultant or their substitute)in person, by telephone or by video link; or
- (b) the passing by the Company to the Client of information which identifies or relates to any of the persons in (a)(i), (a)(ii) or (a) (iii) above,

and the date of Introduction shall be whichever is the earlier of the interview or the passing of such information. **"Introduces"** and **"Introduced"** shall have the corresponding meaning.

**"Loss"** means any demand, contribution, claim, action, proceeding, liability, loss, damage, costs, expenses, tax, national insurance contributions (to the extent permitted by law) and charges and any related penalties, fines or interest whatsoever whether founded in statute, contract, tort or otherwise made or brought against or incurred (including without limitation all losses, liabilities and costs incurred as a result of defending or settling any claims); the term **"Losses"** shall be construed accordingly.

**"Off-Payroll IR35 Legislation"** means Income Tax (Earnings and Pensions) Act 2003 Part 2 Chapter 10 as outlined in the Schedule 1 of the Finance (No.2) Bill 2017).

**"Opt Out"** means a notice given by the Supplier and the Consultant in accordance with Regulation 32(9) of the Conduct Regulations of their agreement that the Conduct Regulations shall not apply in respect of the supply of the Services; the term **"Opted Out"** shall be construed accordingly.

**"Outside IR35"** means where the circumstances under which the Contractor will provide the Services under the Assignment are such that the requirements set out in s61M(1) of the Off Payroll IR35 Legislation are not satisfied.

**"Payment Rate"** has the definition as set out in the Assignment Schedule.

**"Pensions Act"** means the Pensions Act 2008.

**"PSC Contractor"** means an individual who controls and directs their own limited company through which they contract and offer their services.

**"Public Authority"** means an organisation which is a public authority as defined by the Freedom of Information Act 2000 and as further defined in s61L of the Off-Payroll IR35 Legislation.

**"Relevant Period"** means whichever of the following periods ends later:

- (a) the period of 8 weeks commencing on the day after the day on which the Supplier and/or the Consultant last provided services to the Client via the Company (whether under this Agreement or otherwise); or
- (b) the period of 14 weeks commencing on the first day on which the Supplier and/or the Consultant provided services to the Client pursuant to the most recent supply of the

Supplier's and/or the Consultant's services to the Client by the Company (as adjusted in accordance with Regulation 10 of the Conduct Regulations to take into account any break between supplies or 42 days or more).

**"Services"** means as defined in the relevant Assignment Schedule.

**"Supplier"** means (if applicable) a supplier, whose details are set out in the relevant Assignment Schedule, engaged by the Company to supply the services of the Consultant.

**"Systems"** means telecommunications systems, IT systems and security systems.

**"Umbrella Contractor"** means a Consultant (other than a PSC Contractor) who provides his/her services as an employee of an intermediary known as an umbrella company and references to **"Umbrella Company"** shall be construed accordingly.

**"Work Results"** means any item of work carried out and delivered pursuant to this Agreement as part of or arising out of the Services.

- 1.2 Each term starting with a capital letter and not defined in clause 1.1 or elsewhere in this Agreement is as defined in the Assignment Schedule.
- 1.3 References to "Supplier" are relevant only if the Company engages the services of the Consultant via a contractual intermediary such as, without limitation, a personal service company or an Umbrella Company.
- 1.4 Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, re-enacted, replaced or applied by or under any other enactment (whether before or after the date of this Agreement) and all subordinate legislation made (before or after the date of this Agreement) under it from time to time.
- 1.5 Where the context permits, words denoting:
  - (a) persons shall include bodies corporate and unincorporated associations of persons;
  - (b) the singular include the plural and vice versa; and
  - (c) one gender shall include any gender.
- 1.6 These terms apply (and shall be deemed to be accepted by the Client) as from the earlier of the date on which the Company first Introduces the services of a Supplier or Consultant to the Client or the Client first issuing an Assignment specification to the Company, and shall apply thereafter in relation to each subsequent Introduction and/or issued Assignment specification and to each Assignment Schedule agreed between the parties hereunder. In the event of any conflict or inconsistency between an Assignment Schedule and the terms in this main agreement the terms of the relevant Assignment Schedule shall take precedence.
- 1.7 Without prejudice or limitation to clause 6, the Company's Standard Terms of Business for Introducing Candidates for Direct Engagement shall apply where the Client decides to engage a candidate on a direct basis which is not immediately preceded by a period of use of the services of such candidate on a temporary assignment basis.

## 2. The Company's obligations

- 2.1 Subject to the provisions of clauses 5, 6 and 7, the Company will use its reasonable endeavours to procure that the Services will be provided during the relevant Assignment period.
- 2.2 The Company will use its reasonable endeavours to procure that the Supplier (where appropriate) and the Consultant each:

- (a) supply the Services at the Location(s) in accordance with Good Industry Practice;
- (b) comply with the Client's reasonable requirements as may be notified by the Client to the Company from time to time;
- (c) comply with all relevant Client regulations, policies and protocols as notified by the Client to the Company from time to time, including on health and safety and security; and
- (d) provide a suitable substitute consultant when the Consultant is incapacitated, unavailable or otherwise unwilling to provide the Services.

**2.3** The Company will require the Supplier and the Consultant to confirm that the Consultant has:

- (a) valid and subsisting leave to enter and remain in the United Kingdom for the duration of the relevant Assignment and Agreement; and
- (b) is not (in relation to the leave in clause 2.3(a)) subject to any conditions which may preclude or have an adverse effect on the provision of the Services.

### **3. The Client's obligations**

**3.1** The Client warrants and confirms that if the Company issues, or caused to be issued, any advertisement in order to source potentially suitable service providers to provide the Services (or similar services), the Client has, prior to any such issue, given the Company authority to source such service providers.

**3.2** The Client warrants and confirms that it has (or will, prior to the relevant Start Date) given to the Company sufficient information in order for the Company properly to consider the suitability of the Supplier and/or the Consultant to supply the Services, including but not limited to:

- (a) the identity of the Client and, if applicable, the nature of the Client's business;
- (b) the date on which the Client requires provision of the Services to commence and the duration or likely duration of provision of the Services;
- (c) details of the Services including, but not limited to, the type of work, the location at which and the hours during which the Services are to be provided, any risks to health and safety known to the Client and the steps taken by the Client to prevent or control such risks;
- (d) the experience, training, qualifications and any authorisations which the Client considers are necessary, or which are required by law or by any professional body for the Consultant to possess in order to provide the Services;
- (e) any specific risks to health and safety in relation to the Location(s) or specific experience required for a person to work at the Location(s); and
- (f) any expenses payable by or to the Supplier and/or the Consultant.

**3.3** The Client confirms that the Company has supplied it (or will supply, prior to the relevant Start date) with confirmation of the following:

- (a) the identity of the Consultant and (where appropriate) the Supplier;
- (b) that the Supplier/Consultant has the experience, training, qualifications and any authorisation which the Client considers are necessary, or which are required by law or by any professional body, to perform the Services; and

(c) that the Consultant and any Supplier are willing to provide the Services.

**3.4** To the extent that the Company may not have supplied the Client with confirmation as set out in clause 3.3, the Client confirms that it is satisfied with the confirmation supplied; and the Client agrees that if the Consultant or the Supplier fails to have the experience, training, qualifications and/or any authorisation which the Client considers are necessary, or which are required by law or by any professional body to perform the Services, the Company shall have no liability to the Client in respect of this.

**3.5** The Client shall:

- (a) carry out risk assessments of the Services to be undertaken and notify the Company and the Consultant and any Supplier immediately of any specific or potential hazards relating to the Assignment and any precautions the Consultant and any Supplier should take in relation to such risks;
- (b) not allow the Consultant or the Supplier to undertake any work that is hazardous without first undertaking a risk assessment and notifying the Company and the Supplier/Consultant of any risks identified;
- (c) if applicable, make clear to the Company, any Supplier and the Consultant what rules (including but not limited to health and safety, site and security policies, procedures and regulations) apply in respect of the Location(s);
- (d) check and sign or electronically verify timesheets (in a form approved by the Company) verifying the number of hours worked by the Supplier/Consultant and evidencing satisfactory performance of the Services by the Supplier/Consultant;
- (e) allow the Consultant and the Supplier to determine generally how the Services should be supplied;
- (f) notify the Company immediately if it is dissatisfied with the performance by the Supplier or Consultant of the Services (in which case the provisions of clause 5 shall apply), and, for the avoidance of doubt, the Client has no authority to discipline any Supplier or Consultant or to terminate the provision of the Services via any Supplier or Consultant;
- (g) (without limitation to the above) not commit any act or omission constituting unlawful discrimination or harassment of any Supplier or Consultant in connection with the performance of the Services;
- (h) provide the Company, on a timely basis, with such information as the Company shall reasonably request from the Client to enable the Company to comply with or otherwise to evidence its and/or the Client's compliance with the AWR; and
- (i) notify the Company if an Assignment is not suitable for pregnant workers. If an Assignment is not suitable for such workers and the Company so requires the Client will find the relevant pregnant temporary resource "suitable alternative work" in accordance with the AWR and increase the Payment Rate to reflect any increased costs which result from the alternative work or where such suitable alternative work can not be found the Client will pay the Company the Payment Rate until the relevant End Date. The Client will indemnify the Company for any Losses arising from breach of this clause 3.5(i)<sup>1</sup>.

**3.6** The Client agrees to the terms relating to Absence Entitlement set out in the relevant Assignment Schedule.

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<sup>1</sup> Consider whether you want to include this in your agreement with the client, if not, this subclause can be deleted.



- 3.7** **[Clauses 3.7- 3.15- Where client is confirmed to be a Public Authority]:** The Client shall, prior to the Assignment Start Date, provide written notice to the Company confirming whether, in its reasonable opinion, the circumstances under which the Consultant will provide the Services under the Assignment fall Inside IR35 or Outside IR35 ("**Client Assessment**").
- 3.8** The Client hereby acknowledges, confirms and agrees that:
- (a) it had in relation to the Assignment, all the information it needed to carry out the Client Assessment;
  - (b) the Company shall be entitled to rely on the Client Assessment as evidence upon which to make a decision as to whether to pay the Consultant gross or net of PAYE and Class 1 National Insurance Contributions (primary and secondary);
  - (c) the Company may, pursuant to section 61T(4) of the Off-Payroll IR35 Legislation, request the Client to provide reasons for the conclusion reached in the Client Assessment. If so requested, the Client shall, within 31 days of the date of such request, provide to the Company written confirmation of its reasons for reaching its assessment;
- 3.9** In the event that the Client fails to provide a Client Assessment within the time scales set out in section 61T(2) of the Off-Payroll IR35 Legislation, the Company reserves the right to assume that the PSC Contractor is to be treated as falling Outside IR35.] **[To be used where the Company decides to treat non or late assessed contractors as outside IR35]**
- 3.10** The Company shall be entitled to terminate the Assignment by notice to the Client with immediate effect if:
- (a) it does not receive notice from the Client pursuant to clause 3.7 above; or
  - (b) it has reasonable grounds to believe that the circumstances under which the Services are provided and/or the nature of the Assignment have changed and/or require re-assessment; or
  - (c) it receives a late Client Assessment which indicates that the Company's assumption (in the absence of a valid Client Assessment) about the IR35 status of the Consultant may no longer be valid.
- 3.11** The Client shall co-operate with the Company's reasonable requests for information in the event that HMRC and/or the Consultant challenges the Client Assessment and/or the Company's decision to pay the Consultant net or gross of PAYE tax and National Insurance Contributions.
- 3.12** The Client shall notify the Company without delay if it has reason to believe that the circumstances under which the Consultant provides or will provide the Services under the Assignment has or will change such that the outcome of the Client Assessment would be different to that previously notified to the Company.
- 3.13** The Client shall indemnify (and keep it indemnified fully on demand) and hold harmless the Company against any and all Losses suffered by the Company attributable to:
- (a) the Company relying, in good faith, on a Client Assessment which, was at the date of notification of such Client Assessment to the Company, incorrect, incomplete, out of date or misleading. For the avoidance of doubt, an Outside IR35 Client Assessment based on the outcome of a test run by the Client using HMRC's online tool shall not absolve the Client from liability under this clause if, in fact, the information inputted by the Client was incorrect, incomplete, out of date or misleading in any way;
  - (b) any act, omission, default, delay, negligence or breach of statutory duty by or on the part of the Client and suffered or incurred by the Company arising out of or in

connection with any claim made against the Company by a third party arising out of or in connection with the Client's failure to comply with its obligations under section 61T of the Off-Payroll IR35 Legislation;

- (c) any breach of the warranties/indemnities contained in clause 16 and/or the Assignment Schedule.
- 3.14** Nothing in clauses 3.7- 3.13 shall limit the Company's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under an indemnity.
- 3.15** ***[Clauses 3.15-3.18- Where the Client itself may not be a public authority but supplies into a public authority on a "contracted-out" basis]:*** The Client hereby warrants and undertakes that neither it nor any member of the Client's Group is a Public Authority.
- 3.16** Where the Client itself supplies services to a Public Authority the Client warrants and undertakes that:
- (a) the services it supplies are supplied on a fully Contracted-Out basis;
  - (b) it shall not at any time during the Assignment on-supply or otherwise assign the services of the Consultant (including its consultants, officers, employees or subcontractors) engaged under this Agreement to any member of the Client's Group or any third party in connection with any service to a Public Authority which is not a Contracted-Out service.
- 3.17** The Company shall be entitled to rely on the warranties given in clauses 3.16(a) and 3.16(b) above to decide whether or not it needs to apply the Off-Payroll IR35 Legislation in respect of fee payments to Consultants.
- 3.18** The Client shall indemnify (and keep it indemnified fully on demand) and hold harmless the Company for and against any and all Losses (including the amount of any assessment, plus interest and penalties, raised by HMRC in respect of PAYE tax, National Insurance Contributions and/or Apprenticeship Levy which should have been paid or deducted by the Company under the Off-Payroll IR35 Legislation) suffered by the Company attributable to any breach of the warranties contained in clauses 3.16(a) and 3.16(b) above and the Assignment Schedule.
- 4. Payment of Fees**
- 4.1** The Company will be entitled to issue invoices in respect of the Services supplied during the relevant invoicing period (being calculated as a multiple of the number of hours/days (as appropriate) during which the Services have been provided and the relevant Payment Rate).
- 4.2** Unless otherwise agreed in writing, the Company shall be entitled to invoice the Service charges to the Client on a weekly basis and such invoices shall be payable by the Client within 28 days of the date of invoice.
- 4.3** For the avoidance of doubt, in the calculation of the sums due to the Company in relation to Services performed by the Supplier/Consultant a timesheet signed by a representative of the Client shall be conclusive evidence that the Services have been performed to the satisfaction of the Client at the times and for the total period of time set out in such timesheet. If the Client disputes the hours claimed, it shall inform the Company within 2 days of receipt of the disputed timesheet and in any event, no later than 5 days from the date of invoice, and shall co-operate with the Company to establish the hours worked by the Supplier/Consultant. Failure by the Client to sign any such timesheet does not absolve the Client from its obligation to pay the Company the fees for the Services in accordance with this clause 4.
- 4.4** The Company shall not be liable for fraudulent timesheets submitted by or on behalf of a Supplier/Consultant.

- 4.5 Unless otherwise agreed in writing by a director of the Company, the Company will not be obliged to make any rebates or refunds of fees or other sums payable to the Company by the Client.
- 4.6 All amounts due under this Agreement shall be paid in full without any deduction or withholding other than as required by law. The Client shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part.
- 4.7 Unless otherwise agreed by the Company, all payments due to it under this Agreement shall be paid by direct bank transfer to the Company's bank account.
- 4.8 The Company shall apply and charge the Client interest on any overdue amount in accordance with the Late Payment of Commercial Debt (Interest) Act 1998.
- 4.9 All amounts payable under this Agreement (including, for the avoidance of doubt, those under clause 6) are exclusive of value added tax and any other like taxes applicable to a Location(s), which shall be payable by the Client at the rate prevailing at the time and accounted to the relevant taxation authority by the Company.
- 4.10 The Client acknowledges that the Payment Rates are based on the total cost of supply of supplying the Services plus the Company's recruitment services fee. The Company reserves the right to increase the Payment Rates to take into account any statutory or other legal change, including, without limitation, the AWR and the Pensions Act, which leads to an increase in a Consultant's statutory and/or legal entitlements resulting in an increase in the cost of supply for the Company and/or an Umbrella Company Supplier. The Company shall give the Client [20] Business Days written notice of any such increase to Payment Rates.

## 5. Substitution of Supplier/Consultant

- 5.1 The Company shall be entitled from time to time, without prejudice to the other terms of this Agreement, to offer the Client a suitably qualified, skilled and experienced substitute Consultant or Supplier.
- 5.2 If within 24 hours of the relevant Start Date a Consultant or Supplier fails in the reasonable opinion of the Client to perform the relevant Services satisfactorily, the Client shall notify the Company in writing to that effect and the Company will use its reasonable endeavours to procure that a suitable substitute Supplier or Consultant is available to perform the Services as soon as possible. If no such substitute is available within 2 Business Days after receipt by the Company of the Client's written notification of unsatisfactory performance, then the Client may terminate the relevant Assignment Schedule by written notice in accordance with clause 7.

## 6. Transfer Provisions

**[Clauses 6.1 and 6.2 apply only if the Conduct Regulations do not apply]**

### 6.1 For the purposes of this clause 6:

- (a) a **"Deemed Introduction"** will occur where the Client, any member of the Client's Group or any client of the Client with whom the Supplier and/or Consultant had material contact within the 6 months prior to any engagement of that Supplier and/or Consultant by such client (a **"Client Contact"**), or any third party (including any client of the Client or any employment business or other person) to whom the Client introduces that Supplier and/or Consultant (a **"Client Third Party Contact"**), directly or indirectly (other than through the Company):
- (i) employs or otherwise engages that Supplier or Consultant (or substitute) to carry out the Services or services similar to or related to the Services; or

- (ii) otherwise makes arrangements so that Supplier or Consultant (or substitute) provides services which are similar, identical or related to the Services for either the Client, any member of the Client's Group, a Client Contact or a Client Third Party Contact.
  - (b) **"Restricted Period"** means during the term of the relevant Assignment and the period during and within [26] weeks from the date on which the Supplier and/or Consultant last worked on an Assignment via the Company for the Client.
- 6.2** If a Deemed Introduction occurs within the Restricted Period the Client shall pay to the Company a Conversion Fee and the Conversion Fee shall be payable whether or not the provision of Services under this Agreement has commenced when the Deemed Introduction occurs, and no refund of the Conversion Fee shall be payable if such employment, engagement or arrangement terminates.
- 6.3** If, following an Introduction, the Client wants an Engagement to commence within a period of twelve months from the date of the Introduction or an Engagement occurs within such period and the Supplier and/or the Consultant have/has not commenced provision of services via the Company, the Client shall notify the Company and pay to the Company the Conversion Fee, unless the Client elects, within 3 Business Days of the date of the Engagement by written notice to the Company to engage the Company to arrange for the Supplier and/or the Consultant to provide the required services, under and in accordance with the terms of this Agreement, for the Hire Period.
- [Clauses 6.4 and 6.5 apply only if the Conduct Regulations do apply]**
- 6.4** If the Supplier and/or the Consultant have/has commenced provision of the Services via the Company and the Client notifies the Company that it wants an Engagement to commence within the Relevant Period and an Engagement does so commence or an Engagement occurs within the Relevant Period, the Client shall and pay to the Company the Conversion Fee, unless the Client elects, within 3 Business Days of the date of the Engagement, by written notice to the Company to engage the Company to arrange for that Supplier and/or Consultant to provide the Services, on terms similar to those contained in this Agreement and no less favourable to the Client than those which applied immediately before the Company received such notice, for an Extended Hire Period.
- 6.5** If the Client gives the Company written notice of election in accordance with the provisions of clause 6.3 or clause 6.4 and the Company does not supply the relevant services for the duration of the Hire Period or the Extended Hire Period (as appropriate) and the Company is in no way at fault (including, without limitation, if an Engagement occurs or the Supplier and/or the Consultant (as appropriate) does not agree to provide services via the Company for the Hire Period or the Extended Hire Period (as appropriate)), the Client shall, if an Engagement occurs within the Relevant Period, pay to the Company such proportion of the Conversion Fee as equates to the proportion of the Hire Period or Extended Hire Period (as appropriate) during which the Company does not supply the Services.
- 6.6** No refund of the Conversion Fee shall be payable if the Engagement terminates.
- 6.7** If the Client introduces the Supplier and/or the Consultant to a third party who is not an employment business (including, without limitation, any member of the Client's Group or any client of or supplier to the Client's Group) and such third party employs or otherwise engages, directly or indirectly (other than via the Company), that Supplier and/or Consultant and:
- (a) if that Supplier and/or Consultant have/has at any time provided services to the Client via the Company, within the Relevant Period; or
  - (b) if that Supplier and/or Consultant have/has not so supplied services, within a period of twelve months from the date of such introduction,

the Client shall pay to the Company the Conversion Fee and no refund of the Conversion Fee shall be payable if any such employment or engagement terminates.

## **7. Termination**

### **7.1** This Agreement shall continue unless terminated:

- (a) by written notice with immediate effect by the Company if there is any breach of this Agreement by the Client, which is, in the reasonable opinion of the Company, incapable of being remedied or if the Client is entitled to terminate this Agreement pursuant to clause 5; or
- (b) by 5 Business Days' written notice by the Company if there is any other serious or repeated breach of this Agreement by the Client, which is, in the reasonable opinion of the Company, capable of remedy and which is not remedied within 10 Business Days after an earlier notice requiring it to do so; or
- (c) by written notice with immediate effect by the Company and without liability or prejudice to any right for relief if in good faith applicable if the Company forms the opinion for any reason that (i) the Client may not meet its obligations to the Company, or (ii) the Supplier/Consultant may no longer be willing, or able or suitable to undertake the Services for the Client; or
- (d) by written notice with immediate effect by either party if that party shall become unable to commence, continue or completely perform its obligations under this Agreement by reason of illness, injury, other incapacity or by reason of Force Majeure affecting that party, which is not within that party's reasonable control; or
- (e) by written notice with immediate effect by either party if either party shall: become insolvent within the meaning of the Insolvency Act 1986, becomes bankrupt, apply for, or have made against it or him a receiving order, or makes any composition with its creditors or an administration order or if an order is made or resolution passed for the winding up of either party or either party passes a resolution to cease trading or actually ceases trading (an "Insolvency Event"); or
- (f) by written notice with immediate effect if the Company has reasonable grounds to believe that the Client is or is about to suffer an Insolvency Event; or
- (g) by written notice with immediate effect by the Company if the Client refuses to increase the Payment Rate to the Company in order that the Payment Rate (less the Company's margin) is higher than the Comparable Pay pursuant to clause 12.4 and/or is sufficient to cover increased costs of mandatory pension contributions, as applicable; or
- (h) by written notice with immediate effect by the Company if the Client refuses to give the Company any relevant Information (and/or gives the Company incorrect Information) required for the Company and/or the Client to comply with their AWR duties pursuant to clauses 12.2 and/or 12.3.

### **7.2** Without prejudice to the rights to terminate the whole Agreement under clause 7.1, either party may terminate an Assignment Schedule by the period of notice (if any) as agreed in the relevant Assignment Schedule.

### **7.3** The Client shall notify the Company immediately and without delay, and in any event within 24 hours, if a Supplier or Consultant fails to attend for the purposes of providing their Services under an Assignment or notifies the Client that the Supplier or Consultant is unable to attend for any reason.

### **7.4** If, for any reason, the Client does not require the Consultant or the Supplier to perform Services during any termination notice period the Client shall, nevertheless, pay the Company

as though the Consultant or Supplier was providing Services for 40 hours per week for the duration of the notice period. Termination of this Agreement shall be without prejudice to the rights of either party arising prior to termination.

## **8. Acknowledgements and Liability**

**8.1** Nothing contained in this Agreement shall in any way constitute:

- (a) the Supplier or the Consultant as the employee(s) or worker(s) of the Company or the Client; or
- (b) (where there is no Supplier,) the Consultant as the employee of the Company or the employee of the Client,

and the Company confirms that the Supplier, or (where there is no Supplier) the Consultant, is engaged under a contract for services (in respect of which, without limitation, the Client does not supervise and/or have the right to control the actions of the Supplier or the Consultant in the way that it would if an employment relationship existed).

**8.2** Where the Services are performed by a PSC Contractor, the Company and the Client acknowledge that the PSC Contractor offers their services on an independent business to business basis and accordingly neither the Client nor the Company supervises and/or has the right to control the actions of the PSC Contractor in the way that it would if an employment or worker relationship existed. If the Client does, or intends to, supervise and direct any PSC Contractor, the Client shall immediately notify the Company of that fact.

**8.3** The parties acknowledge that the Company is not obliged to put the Supplier and/or the Consultant forward for consideration by the Client for the provision of services and the Supplier and/or the Consultant is not obliged to provide services to the Client beyond the termination of the relevant Assignment.

**8.4** The Client acknowledges that the Company is in the business of providing resourcing services which comprise the sourcing and introduction of suitable service suppliers to the Client and the contractual arrangements for the provision of their services to the Client. Whilst every effort is made by the Company to ensure a reasonable standard of skill, integrity and reliability from the Supplier/Consultant and to provide the Supplier/Consultant in accordance with the Client's requirements, the Company cannot accept responsibility for the quality of the Services provided by the Supplier and the Consultant or their activities while at the Location(s). Accordingly the Company's liability is limited as set out in this clause 8.

**8.5** The Client acknowledges that the Company shall not be responsible for supervising, monitoring or directing the Supplier(s) and/or Consultant(s) whilst working on Assignment and that accordingly, only the Client is in a position to assess and insure against risks in respect of or during or arising out of the period for which the Supplier and/or the Consultant is performing the Services.

**8.6** The charges made by the Company reflect only those Supplier/Consultant sourcing, selection and introduction services agreed to be supplied by the Company and do not indicate acceptance of any liability for the Supplier's or the Consultant's acts or omissions.

**8.7** Subject to clause 8.9, the Company shall not be liable for any Losses or delay arising from:

- (a) any failure to provide the services of the Supplier and/or Consultant for all or part of the term of this Agreement;
- (b) the negligent, wrongful, dishonest or fraudulent acts or omissions or misrepresentations of the Supplier or the Consultant, including, without limitation, any lack of skill of the Supplier/Consultant; or

- (c) theft of any data or materials or the negligent driving of the Supplier and/or Consultant.

**8.8** the Company shall not be liable for any Losses arising out of:

- (a) any act or omission or misrepresentation (whether before or after the date of this Agreement) of the Supplier or the Consultant;
- (b) any special, indirect or consequential damages or loss; or
- (c) any loss of profit, business, revenue, goodwill, anticipated savings and/or any claims made under third party contracts, arising out of any failure by the Company to perform any obligations under this Agreement.

**8.9** Nothing in this Agreement shall operate to exclude or limit the Company's liability for:

- (a) death or personal injury caused by the Company's negligence;
- (b) its own fraudulent acts or omissions; or
- (c) any other liability which cannot by law be excluded.

**8.10** The Client will assist the Company in complying with the Company's duties under the Working Time Regulations by supplying any relevant information about an Assignment requested by the Company and the Client will not do anything to cause the Company to be in breach of its obligations under such Regulations. Where the Client requires the Services to be performed by a Supplier and/or Consultant for more than 48 hours in any week the Client will notify the Company of this requirement before the commencement of that week.

**8.11** The Client shall indemnify and keep indemnified the Company against any Losses incurred by the Company arising out of this Agreement and/or as a result of any breach of this Agreement by the Client.

## **9. Confidentiality and Intellectual Property**

**9.1** The Company undertakes to the Client that it shall, and shall require that the Supplier and the Consultant shall:

- (a) keep confidential, all information relating to Work Results, Intellectual Property Rights in the Work Results and the Client's business and affairs (including, for the avoidance of doubt, Payment Rates ) ("**Confidential Information**") which may become known to it/them in connection with the supply of the Services; and
- (b) require that the Supplier and the Consultant shall enter into any and all assignments of Intellectual Property Rights (relating to Work Results) or confidentiality undertakings that the Client may reasonably require it or them to enter into.

## **10. Data Protection**

**10.1** The terms "Personal Data", "Data Controller", "Data Subject", "Data Processor" and "process/processing" (and their derivatives) used in this clause 11 shall have the meaning given in applicable Data Protection Legislation. "Third Party" means a third party, such as a any client or employment business or other persons, which is part of the supply chain through which the Supplier and/or the consultant supplies the Services to the Client. References to "consent" shall mean a form of consent which complies with the requirements of Article 7 of the GDPR. "Client Data" means any Personal Data (other than Personal Data related to the Supplier) held and processed by the Client, whether as a Data Controller or Data Processor.

- 10.2** The Parties acknowledge that, for the purposes of the Data Protection Legislation, each Party shall be considered to be a Data Controller with respect to Personal Data processed in connection with this Agreement.
- 10.3** Each Party shall comply with the provisions and obligations imposed on them by the Data Protection Legislation when processing Personal Data under this Agreement.
- 10.4** To the extent that a Party processes any Personal Data on behalf of the other Party, the processing Party shall: (a) comply with the provisions and obligations imposed on a processor by the GDPR, including the stipulations set out in Article 28(3)(a)-(h) which form a part of, and are incorporated into, this Agreement as if they were set out in full, and the reference to "documented instructions" in Article 28(3)(a) shall include the provisions of this Agreement; and (b) not disclose any Personal Data to any Data Subject or to a third party other than at the written request of the other Party or as expressly provided for in this Agreement.
- 10.5** If either Party receives any complaint, notice or communication which relates to the processing of Personal Data by the other Party or to either Party's compliance with the Data Protection Legislation, or if either Party suffers a personal data breach (as defined in the GDPR), it shall immediately notify the other Party and provide the other Party with reasonable co-operation and assistance in relation to any such complaint, notice, communication or personal data breach.
- 10.6** The Supplier warrants and undertakes to the Company that:
- (a) it has the right to transfer Personal Data relating to the Candidate/Consultant to the Company, the Client and any Third Party for use by the Company, the Client and any Third Party for purposes connected with the supply of the Services under this Agreement, and that it has either:
    - (i) obtained written consent from the Candidate/Consultant to such processing; or
    - (ii) secured another legal data processing ground, in accordance with applicable Data Protection Legislation, to share the Candidate/Consultant's Personal Data with the Company, the Client and any relevant Third Party;
  - (b) the Candidate/Consultant has been notified of the Company's fair processing information as set out at [www.healthcarestaffingsolutions.co.uk/privacy-policy/](http://www.healthcarestaffingsolutions.co.uk/privacy-policy/) (as updated from time to time) and that it will direct the Candidate/Consultant to any other fair processing information as required by the Company, the Client or Third Party from time to time;
  - (c) where the Assignment involves or may involve the processing of the Candidate/Consultant's Personal Data in jurisdictions outside the UK or the European Economic Area (the "EEA"), the Supplier shall only process the Candidate/Consultant's Personal Data in accordance with applicable Data Protection Legislation.
- 10.7** The Supplier shall (and shall procure that the Candidate/Consultant shall) do nothing to place the Company, the Client or any Third Party in breach of Data Protection Legislation.
- 10.8** The Supplier acknowledges and agrees that where it (and/or the Candidate/Consultant) processes Client Data, the Client's data processing policies shall apply to such processing.
- 10.9** The Supplier shall indemnify the Company for any Losses the Company incurs or suffers arising from any breach of any warranty contained in clause 9..



11. **Anti-Bribery**

11.1 The Client acknowledges and agrees that the Company will not tolerate bribery in any form in connection with the conduct of its business.

11.2 The Client shall:

- (a) comply with all applicable laws, statutes, regulations, codes and guidance relating to anti-bribery and anti-corruption ("**Anti-Bribery Laws**"), including without limitation the Bribery Act 2010;
- (b) not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
- (c) not do, or omit to do, any act that will cause the Company to be in breach of the Anti-Bribery Laws; and
- (d) promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Client in connection with the performance of this Agreement.

11.3 The Client shall promptly notify the Company if, at any time during the term of this Agreement, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 11.2.

11.4 Breach of this clause 10 shall be deemed a material breach of this Agreement.

11.5 The Client shall indemnify the Company against any losses, liabilities, damages, costs and expenses incurred by the Company as a result of any breach of this clause 10 by the Client (including any consequential loss or damage).

12. **AWR**

12.1 For the purposes of this clause, the following definitions shall apply:

**"Agency Worker"** has the meaning given under Regulation 3(1) of the AWR;

12.2 The Company and the Client shall each comply with their obligations under the AWR and each party shall cooperate fully with the other in connection with the AWR. In particular, the Client shall provide the Company on a timely basis, with such information as the Company shall reasonably request from the Client to enable the Company to comply with or otherwise evidence the Company's and/or the Client's compliance with the AWR and the Client will indemnify the Company for any Losses arising directly or indirectly from the Client: (a) refusing to provide the Company with information; or (b) providing incorrect and/or out of date Information; or (c) failing to update the information on a timely basis.

12.3 The Company and the Client acknowledge and agree that whether or not a Consultant has rights as an Agency Worker will depend on the facts of that particular supply but as a general rule any Consultant will not be an Agency Worker if they:

- (a) do not work under the supervision and direction of the Client (or the Company); or
- (b) do not have a contract of employment, or any other contract with the Company to perform work and services personally; or
- (c) carry on a profession and/or their own business undertaking which has the effect that the Client and/or the Company are customers or clients of the individual's business,

For the purposes of this clause 12 such service providers shall be defined as **"Consultants Outside the Scope of the AWR"**.

- 12.4** Where the Services are performed by Consultants Outside the Scope of the AWR the Client shall use all reasonable endeavours to ensure it does not seek to control, give direction to or supervise such individuals. Accordingly, the Client and the Company acknowledge and agree that the services of PSC Contractors [and sole traders] are engaged on the basis that relevant individuals are independent contractors and as such without rights under the AWR.
- 12.5** The Company reserves the right to refuse to make a supply of an Agency Worker where the Company reasonably considers that the Payment Rate may (after deduction of: the Company's normal recruitment services fee or margin and payment of or payment to a third party in respect of Employer's National Insurance (where applicable) and any other normal deduction in respect of sums received in relation to an Agency Worker's services) be less than the relevant Comparable Pay;
- 12.6** The Client shall immediately notify the Company if it receives any complaint, request for information or claim from a Consultant relating to Payment Rate (after deduction of the Company's normal recruitment services fee) or any other rights claimed under the AWR. The parties shall work and co-operate together to respond to and resolve any such complaints or claims. The Client undertakes to provide the Company with any further Information it may request in order to respond to any such complaint, request for information or claim.
- 13. General**
- 13.1** **[This clause 13.1 applies only if the Conduct Regulations do apply]** For the purposes of the Conduct Regulations the Company shall operate as an employment business in relation to the Client (except where any permanent placement results from the Company's introduction(s) to the Client, in which case the Company shall act as an employment agency).
- 13.2** This Agreement together with each Assignment Schedule agreed by the parties and any agreement between the parties relating to credit terms pursuant to clause 4.2 constitute the entire agreement between the parties and supersede all previous agreements and arrangements (if any) whether written, oral or implied between the Company and the Client relating to the Services and all such agreements still effective at the date of this Agreement (if any) shall be deemed to have been terminated by mutual consent with effect from the Start Date but without prejudice to any rights which have arisen prior to such termination and so that nothing in this clause 13.2 shall operate to exclude or limit the liability of any party in respect of fraud.
- 13.3** The Client acknowledges that, in entering into this Agreement, it has not relied on any representations by the Company, the Supplier or the Consultant made before the execution of this Agreement other than those expressly set out in this Agreement.
- 13.4** This Agreement is personal to the Client and the Client shall not be entitled to assign or sub-contract its obligations or rights under this Agreement to any third party without the prior written consent of the Company. The Company shall however be entitled to assign this Agreement to any member of the Company's Group and, upon such assignment, without prejudice to the assignor's rights in respect of matters arising prior to such assignment; all references to the Company shall be deemed to refer to the assignee.
- 13.5** **[This clause 13.5 applies only if the Conduct Regulations do apply]** Any assignment of this Agreement by the Company in accordance with clause 13.4 shall be subject to the Client's prior consent (such consent not to be unreasonably withheld or delayed) provided that the Company may assign its rights under this Agreement to any member of the Company's Group or (for the purposes of normal invoice discounting arrangements) to a reputable commercial finance company.
- 13.6** Time is of the essence for all times, dates and periods specified in this Agreement.

- 13.7** No amendment to this Agreement is effective unless it is in writing and signed on behalf of each party by a person duly authorised by that party.
- 13.8** Any notice required to be given under this Agreement (including the delivery of any timesheet or invoice) shall be in writing signed by a person duly authorised by the sending party and delivered by hand, sent by facsimile, e-mail or prepaid first class post to the recipient at its fax number or address specified in this Agreement (or as otherwise notified from time to time to the sender by the recipient for the purposes of this Agreement).
- 13.9** This Agreement shall be governed by and construed in all respects in accordance with English law and the Courts of England and Wales shall have exclusive jurisdiction.
- 13.10** If any provision or any part of this Agreement is held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law:
- (a) such provision or part shall to that extent be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall not be affected; and
  - (b) to the extent permitted by law, the Company and the Client shall negotiate in good faith a substitute to any provision severed under clause 13.10(a) by a provision which is of similar effect but which is not illegal or unenforceable.
- 13.11** None of the provisions of this Agreement is intended to be for the benefit of, or enforceable by third parties (other than permitted assignees of the Company who shall be entitled to enforce the provisions of this Agreement as if original parties to it) and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

**14. Application of the Conduct Regulations to this Agreement**

- 14.1** If (as indicated in the relevant Assignment Schedule) the Supplier and the Consultant have Opted Out of the Conduct Regulations; or the Supplier is an independent PSC Contractor supplying services on a business to business basis such that they do not act for and under the control of the Client, then all clauses in this Agreement commencing "[**applies only if the Conduct Regulations do apply**]", namely clauses 6.4 and 6.5, shall not apply.
- 14.2** If the Conduct Regulations apply to the supply and (as indicated in the Assignment Schedule) the Supplier and the Consultant have not Opted Out; or such Opt Out is withdrawn, then clauses 6.1 to 6.2 shall not apply.
- 14.3** If there is no company supplier through which the Consultant is providing the Services there is no entitlement under the Conduct Regulations for the Consultant to Opt Out and accordingly clauses 6.1 to 6.2 shall not apply.
- 14.4** It is not accepted that PSC Contractors work or shall work for and under the control of the Client but as a matter of established industry practice some PSC Contractors together with their limited companies choose to Opt Out of the Conduct Regulations.

Signed by Jonathan Brown on behalf of the  
**Company**

Date: 3/04/2017



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Director